



The complainant, by the direction of the Comptroller of the Currency, does respectfully ask the Court to advance this case for argument, not only because it consists of questions certified by the Court of Appeals, but because a large number of other actions in other jurisdictions are dependent upon the decision in this action.

EDWARD WINSLOW PAIGE,
Of Counsel.

Come now the parties and respectfully move the Court that this case be advanced for oral argument.

IN THE SUPREME COURT

OF THE UNITED STATES,

Twenty-third of May, one
thousand eight hundred and
ninety-eight.

UNITED STATES CIRCUIT COURT OF APPEALS.

SECOND CIRCUIT.

KENT K. HAYDEN, as Receiver,
Complainant-Appellant,

against

GEORGE G. WILLIAMS and JOHN
B. DODD,
Defendants-Appellants.

**CERTIFICATION OF QUESTIONS TO THE SUPREME
COURT UNDER THE ACT OF MARCH 3, 1891.**

This cause came before this Court on January 18, 1898, upon cross appeals from a decree of the Circuit Court, Southern District of New York, which decreed the payment of certain moneys to the complainant. The defendants appealed from the whole decree; the complainant because it did not give him more.

Upon the argument of said appeals certain questions of law were presented, as to which this Court desires the instructions of the Supreme Court for its proper decision. The pleadings are annexed hereto, and the facts are as follows:—

Statement of Facts.

The complainant is the Receiver of the Capital National Bank of Lincoln, Nebraska, which suspended payment in January, 1893, in a condition of hopeless insolvency. The stockholders, including the defendants, have been assessed to the full value of their respective holdings, but the money thus obtained added to the amount realized from the assets would not be sufficient even if all dividends

paid during the bank's existence were repaid to the receiver to pay 75 per cent. of the claims of the bank's creditors. This suit was brought to compel the repayment of and accounting for certain dividends paid by the bank to the defendants as holders of capital stock of the bank of the par value of \$5,000, on the ground alleged in the bill that each of said dividends was fraudulently declared and paid out of the capital of the bank and not out of net profits. A similar suit was brought against the stockholders resident in Nebraska, and upon appeal from a decree on demurrers was sustained by the Circuit Court of Appeals in the Eighth Circuit, defendants in that case conceding, by their demurrers, that the bank was insolvent when each dividend was paid.

The bank was organized in 1883 with a capital of \$100,000, which was increased to \$200,000 June 2, 1884, and to \$300,000 July 21, 1886. The dividends which were paid from time to time were as follows:

DATE.	AMOUNT PAID IN DIVIDENDS.	DEFENDANT RECEIVED.
1885, Jan. 13.....	\$15,000	\$187.50
“ July 14.....	13,000	162.50
1886, Jan. 12.....	16,000	200.
“ July 13.....	14,000	175.
1887, Jan. 11.....	18,000	300.
“ July 12.....	18,000	300.
1888, Jan. 10.....	18,000	300.
“ July 10.....	18,000	300.
1889, Jan. 8.....	18,000	300.
“ July 9.....	18,000	300.
1890, Jan. 14.....	15,000	250.
“ July 11.....	15,000	250.
1891, Jan. 13.....	15,000	250.
“ July 13.....	15,000	250.
1892, Jan. 12.....	15,000	250.
“ July 12.....	12,000	250.

All dividends except the last were paid to the defendant Williams, a stockholder to the amount of \$5,000, from the organization of the bank; the last dividend was paid to defendant Dodd, who bought Williams' stock and had the same transferred to his own name December 16, 1891.

When the dividend of January 6, 1889, was declared and paid, and when each subsequent dividend down to and including July, 1891, was declared and paid, there were no net profits, the capital of the bank was impaired, and the dividends were paid out of capital, but the bank was still solvent.

When the dividends of January and July, 1892, were declared and paid, there were no net profits, the capital of the bank was lost and the bank actually insolvent.

The defendants, neither of whom was an officer or director, were ignorant of the financial condition of the bank, and received the dividends in good faith, relying on the officers of the bank and believing the dividends were coming out of profits.

Questions Certified.

Upon the facts set forth, the questions of law concerning which this court desires the instruction of the Supreme Court for its proper decision is:

Can the receiver of a national bank recover a dividend paid not at all out of profits, but entirely out of capital, when the stockholders receiving such dividend acted in entire good faith, believing the same to be paid out of profits, and when the bank at the time such dividend was declared and paid was not insolvent?

Has a U. S. Circuit Court jurisdiction to entertain a bill in equity brought by the receiver of a national bank against stockholders to recover dividends which, it is claimed, were improperly paid, when such suit is brought against two

or more stockholders and embraces two or more dividends, and when the objection that there is an adequate remedy at law is raised by the answer?

March 9, 1898.

WM. J. WALLACE.

E. HENRY LACOMBE.

N. SHIPMAN.

SIRS,

You will take notice that in the Capitol at Washington on the twenty-third day of May, one thousand eight hundred and ninety-eight, I will move the Supreme Court of the United States that this case be advanced for oral argument.

Yours very truly,

EDWARD WINSLOW PAIGE.

To the Messrs. DE WITT.